


RECORDING REQUESTED BY:

Sacramento Municipal Utility District
6201 "S" Street
P.O. Box 15830
Sacramento, California 95852-1830


Sacramento County Recording
Craig A Kramer, Clerk/Recorder
BOOK **20061117** PAGE **1135**
Friday, NOV 17, 2006 10:51:40 AM
Ttl Pd \$45.00 Nbr-0004611745
SJS/57/1-13

WHEN RECORDED MAIL TO:

State of California
Department of Toxic Substances
Control
8800 Cal Center Drive
Sacramento, California 95826
ATTN: James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup
Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Sacramento County APN # 009-0042-006-0000)

This Covenant and Agreement ("Covenant") is made by and between the Sacramento Municipal Utility District (the "Covenantor"), the current owner of property located at 1931 Front Street, Sacramento, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in California Health and

Safety Code (H&SC) section 25260. The Covenantor and the Department therefore intend that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property. The Property is approximately 0.15 acres in size and is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is commonly designated as Sacramento County Assessor Parcel Number 009-0042-006-000. The Property abuts the highway right-of way to the North and East, an undeveloped parcel where "T" Street was once located on the South, and Front Street on the West. The Property is also described in the official records of Sacramento County in Book 670809, Page Number 552, recorded on August 9, 1967 Official Records of Sacramento County. The Property is located within Section 2 of Township 8 North, Range 4 East relative to the Mount Diablo Base and Meridian.

1.02. Hazardous Substances Present. Hazardous substances, as defined in H&SC section 25316, remain on portions of the Property. The hazardous substances of concern are benzene, toluene, ethylbenzene, xylene, and a group of compounds known as polycyclic aromatic hydrocarbons which are present in the groundwater beneath the Property. These substances are also hazardous materials as defined in H&SC section 25260.

1.03. Remediation Plan. The Property is being remediated pursuant to a Remedial Action Plan (RAP) approved by the Department in May of 1991 and Remedial Action Order (RAO) HSA 94/95-008 for the SMUD Front Street Site issued by the Department dated February 1, 1995. Also associated with the RAO is a Final Groundwater Engineering Evaluation/Cost Analysis and Remedial Action Workplan (EE/CA-RAW) approved by the Department on April 27, 2001. The RAO and the RAP require the recordation of a land use covenant on the Property. The remediation of the Property is being completed in coordination with the remediation of the Pacific Gas and Electric Sacramento Manufactured Gas Plant site, the California Department of Transportation Interstate 5 Q Street Off-ramp site, and the City of Sacramento Housing and Redevelopment site (hereinafter collectively referred to as the "Associated Sites").

1.04. Future Use Restrictions. The findings of the EE/CA-RAW were based upon the assumption of continued operation and maintenance of monitoring and observation wells located on the Property and the Associated Sites, as well as no extraction of groundwater for use as a drinking water source. A land use covenant is necessary to provide access to the monitoring and observation wells. A land use covenant is necessary to preclude extraction of groundwater for any purpose other than the Department-approved remediation, except as otherwise allowed by the Department.

1.05. Remedial Systems. As required by the RAP, contaminated soil was excavated to depths ranging from ten (10) to nineteen (19) feet below the ground surface. Contaminated soil was transported and disposed of at an authorized disposal facility. A geosynthetic clay liner was placed at the bottom of the excavation prior to backfilling. As required by the RAP, a Groundwater Extraction and Treatment System (GWETS) and a Soil Vapor Extraction and Treatment System (SVETS) were installed at the Property. The EE/CA-RAW concluded that the ongoing operation of the existing GWETS and SVETS would remedy the contamination by reducing concentrations of the hazardous substances of concern found in the groundwater. The GWETS includes various piezometers and monitoring wells that need to be maintained until the remedial goals are attained and no further monitoring is needed as determined by the Department. The SVETS includes various wells that need to be maintained until the remedial goals are attained and no further vapor extraction is necessary as determined by the Department. This Covenant is necessary to protect the remedial systems required for the Property and the Associated Sites.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor entities, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title or an ownership interest to all or any portion of the Property.

2.03. Occupant. "Occupant" means any Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction:

- (a) Runs with the land pursuant to H&SC section 25355.5 (a)(1)(C) and California Civil Code Section 1471;
- (b) Inures to the benefit of and passes with each and every portion of the Property;
- (c) Applies to and binds the successors in interest to the Property;
- (d) Is for the benefit of and enforceable by the Department; and
- (e) Is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5 (a)(1)(C), the Restrictions herein shall be binding upon each Owner and Occupant, and shall continue as covenant running with the Property in perpetuity, except as otherwise provided in this instrument. Pursuant to Civil Code Section 1471, all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, the owner, lessor, assignor, or other transferor shall give the buyer, lessee, assignee, or other

transferee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). Such notice shall include the name and address of the new Owner. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering this Covenant to be paid by Owner. The Department has incurred and will in the future incur costs associated with the administration, implementation and enforcement of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent owners that the Owner shall pay the Department's costs in administering, implementing and enforcing this Covenant to the extent authorized by California Code of Regulations, title 22, section 67391.1(h), such as costs incurred in conducting inspections of the Property and reviewing any document submitted pursuant to Sections 4.02, 4.03, 4.04, 6.01, 6.02 or 7.04 of this Covenant. Failure of the Owner to pay such costs when billed is a breach of this Covenant and enforceable pursuant to section 5.01 of the Covenant.

3.07. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety or the environment.

3.08. Access for Operation and Maintenance. The entity or person(s) responsible for operating and maintaining any necessary remedial systems shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and

maintenance activities. Such right of entry and access shall continue until such time as the Department determines that such activities are no longer required.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The use of the Property shall be restricted to industrial and commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under twenty-one (21) years of age.
- (d) A day care center for children.
- (e) A long-term care facility for the elderly, handicapped, or infirm.

4.02. Prohibited Activities. The following activities are specifically prohibited, without prior written approval from the Department:

- (a) Activities that may disturb, alter, damage, or destroy the remedial systems required for the Property and the Associated Sites.
- (b) Activities that may interfere with the operation, maintenance or repair of the remedial systems required for the Property and the Associated Sites.
- (c) Extraction of groundwater for purposes or uses other than the Department-approved groundwater remediation, except as otherwise allowed by the Department.
- (d) Activities that may disturb soils that lie at depths greater than ten (10) feet below ground surface at the Property (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining).
- (e) The injection of any chemical, compound, or formulation into the soil or groundwater beneath the Property for purposes or uses other than groundwater remediation.

4.03. Soil Management. Any contaminated soils brought to the surface, shall be managed in accordance with all applicable provisions of state and federal laws and shall not be removed from the Property without a Soil Management Plan approved by the Department.

4.04. Notification of Damage to Remedial Systems. The Owner or Occupant shall provide Notification to the Department of the type, cause, location and date of any damage to the remedial systems that are required for the Property and the Associated Sites. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate Notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupants to comply with any of the requirements or Restrictions of this Covenant shall be grounds for the Department to require that the Covenantor, Owner or Occupant modify or remove, as the Department or determines appropriate, any non-conforming improvements ("Non-conforming improvements" may include but are not limited to buildings, roads, driveways, ponds, drainages, and paved parking areas) constructed or placed upon any portion of the Property in violation of the aforesaid Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. The Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233 or any successor provisions.

6.02. Termination. The Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234 or any successor provision.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sacramento within ten (10) days of receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Ms Lourdes Jimenez-Price, Esq.

Office of General Counsel

Sacramento Municipal Utility District

6201 "S" Street

P.O. Box 15830

Sacramento, California 95852-1830

Or to: Owner(s) as identified to the Department under paragraph 3.05 of this Covenant.

To Department:

Department of Toxic Substances Control

Northern California-Central Cleanup Operations Branch

8800 Cal Center Drive, 3rd Floor

Sacramento, California 95826-3200

Attention: James L. Tjosvold, P.E., Chief

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Inspection and Reporting Requirements. In the absence of an agreement between the Department and the Covenantor providing that the Covenantor shall be responsible for the requirements of this Section, the Owner, or a duly authorized representative of the Owner, shall conduct an annual inspection of the Property and submit an annual report to the Department by January 15 of each calendar year. The annual report, filed under penalty of perjury by the then-current Owner, shall certify that the Property is being used in a manner consistent with this Covenant. The annual report shall describe how all the requirements outlined in this Covenant are being met. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection. It also shall describe how the observations were performed and the basis for the statements and conclusions in the annual report (e.g., drive by, walk in, etc.). If violations of this Covenant are noted by the observer, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten (10) days of identifying the violation; determine the identity of the party in violation, send a letter advising the party of the violation of this Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of the Covenant shall be sent to the Department within ten (10) days of its original transmission.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the

surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

Date: 10/2/2006

By:



LARRY LAGOMARSINO

Name and title LAND SPECIALIST

Sacramento Municipal Utility District

"Department"

Date: 10/17/06

By:



James L. Tjosvold, P.E., Chief

Northern California Central Cleanup Operations Branch

Department of Toxic Substances Control

EXHIBIT A

That real property situated in the City of Sacramento, County of Sacramento, State of California described as:

A portion of Lot 4 in the block bounded by "S" and "T", Front and Second Streets of the City of Sacramento, according to the map or plan thereof, described as follows:

Beginning at the southwesterly corner of said Lot 4; Thence (1) along the westerly line of said Lot 4 North 18 degrees, 28 minutes, and 40 seconds East 85.00 feet; thence (2) leaving said westerly line South 71 degrees 32 minutes 44 seconds East 57.67 feet to a point distant 236.89 feet westerly, measured at right angles from the "B1" line at Engineer's Station "B1"517+21.09 of the Department of Public Works' Survey on Road 03-Sec-5, Post Mile 21.7/34.7; thence (3) South 5 degrees, 17 minutes, 15 seconds East 92.86 feet to a point in the southerly line of said lot 4; thence (4) along said southerly line North 71 degrees, 32 minutes, 44 seconds West 95.09 feet to the point of beginning; containing 6492 square feet, more or less.

Excepting and reserving unto the State of California any and all rights of ingress to or egress from the land herein conveyed over and across courses (2) and (3) and over and across adjoining "T" Street on the westerly line of the freeway.

COUNTY OF SACRAMENTO)

which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



STATE OF CALIFORNIA)

)

COUNTY OF Sacramento)

On this 17th day of October, in the year 2006, before me Kathleen C. Duncan, personally appeared James I. Ljosvold, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kathleen C. Duncan

